

Exhibit 8

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April 17, 2019

VIA FEDERAL EXPRESS

United States Environmental Protection Agency
EPA Region 2
290 Broadway
17th Floor
New York, NY 10007-1866

Attn: Kathryn Deluca, Assistant Regional Counsel

Re: Diamond Alkali Superfund Site (Lower Passaic River)
Our File: 06378

Dear Ms. Deluca:

We represent Congoleum Corporation in connection with the above matter.

Enclosed is a Supplemental and Amended Response of Congoleum Corporation to its Response to the EPA's 104(e) Request for Information regarding the Diamond Alkali Superfund Site, dated January 15, 1998.

Sincerely yours,

DUGHI, HEWIT & DOMALEWSKI


Scott A. Hall
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SUPPLEMENTAL AND AMENDED RESPONSE OF CONGOLEUM CORPORATION
TO REQUEST FOR INFORMATION OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING
DIAMOND ALKALI SUPERFUND SITE AND PASSAIC RIVER STUDY AREA

**AMENDED EXHIBIT 1
AMENDED CORPORATE HISTORY OF CURRENT CONGOLEUM**

Exhibit 1, Corporate History of Congoleum, attached to Congoleum's Responses to the EPA's 104(e) Request for Information dated January 15, 1998, is deleted in its entirety and replaced with this Amended Exhibit 1, Amended Corporate History of Current Congoleum.

INTRODUCTION

As stated in the "Congoleum Introduction" in its Responses to the EPA's 104(e) Request for Information dated January 15, 1998, at the time Congoleum prepared its responses, "[T]here [were] no current Congoleum employees with personal knowledge concerning the manufacturing operations of the former Kearny Facility, and Congoleum's responses to the Request for Information [were], therefore, necessarily limited and qualified to be based upon information and belief (not personal knowledge) and what was discovered through documents and from interviews of former employees in the exercise of due diligence."

Since the time of preparation and certification of Congoleum's Responses to the EPA's 104(e) Request for Information, the company has received documents which require a Supplemental and Amended Response to the EPA's 104(e) Request for Information. In particular, Congoleum supplements and amends "Exhibit 1, Corporate History of Congoleum" as well as responses to any and all questions as necessary to make all responses with regard to the corporate history of Current Congoleum consistent with this Amended Exhibit 1, Amended Corporate History of Current Congoleum.

The corporation currently known as Congoleum Corporation and the company which was served with and served Responses to the EPA's 104(e) Request for Information dated January 15, 1998 ("Current Congoleum") was created as a result of a series of reorganizations and corporate transactions by an entity known as Congoleum Industries, Inc. assigning certain defined assets and liabilities of one of its subsidiaries to Current Congoleum in 1986 ("1986 Transaction"). At the time that Robert G. Rucker, Director of Environmental Affairs, certified Current Congoleum's Responses to the EPA's 104(e) Request for Information, to the best of Current Congoleum's knowledge, information and belief, Mr. Rucker was not in possession of and had not reviewed the 1986 Transaction documents.¹ More recently, Current Congoleum has obtained and reviewed the 1986 Transaction documents.

¹ As used herein, the 1986 Transaction documents not in possession of Mr. Rucker in January 1998, included but were not limited to, the April 18, 1986 Instrument of Assignment and Assumption between 1984 Congoleum and Resilco, the April 18, 1986 Instrument of Assignment and Assumption between 1984 Congoleum and Congoleum Industries and the July 1, 1986 Agreement of Plan of Merger by and Among Resilient Holdings Incorporated,

Based on a review of the 1986 Transactional documents, Current Congoleum is not the corporate successor to any company, whether a parent or subsidiary company, or other entity or person who owned or operated any manufacturing facilities on property in Kearny, New Jersey, including but not limited to property or manufacturing facilities owned and operated by companies formerly known as United Roofing & Manufacturing Company, Barrett Co., Inc., Congoleum Co., The Congoleum Corporation of PA, Congoleum Co., Inc., Nairn Linoleum Manufacturing Corporation, Congoleum Nairn, Inc., Bath Industries, Inc., Congoleum Corporation (“1968 Congoleum”), Congoleum Industries, Inc., Congoleum Corporation (“1975 Congoleum”), Congoleum Corporation (“1980 Congoleum”), Congoleum Industries, Inc. (“1984 Congoleum Industries”), Congoleum Corporation (“1984 Congoleum”) or Bath Iron Works Corporation. Current Congoleum is not legally responsible for the alleged environmental liabilities at the Diamond Alkali Superfund Site and Passaic River Study Area arising from the former “Congoleum” Kearny Manufacturing Facilities and/or the operations of prior but unrelated entities also known as “Congoleum.”

Current Congoleum has asserted this position in the following lawsuits: *DVL, Inc., et al. v. Congoleum Corporation, et al.*, United States District Court, District of New Jersey, Civil Action No. 2:17-cv-04261; *Bath Iron Works v. Congoleum Corporation*, United States District Court, District of Maine, Case 2:18-cv-00405. Current Congoleum will also assert this position in the Lower Passaic River Study Area Operable Unit No. 2 (“OU2”) Allocation Proceedings conducted by David Batson (Allocation Specialist, AlterEcho) at such time that Factual Statements and responses to an Initial Allocation Questionnaire are filed with the Allocation Specialist.

CURRENT CONGOLEUM’S CORPORATE HISTORY

A. Current Congoleum

Current Congoleum was formed in 1986 for the limited purpose of purchasing only those certain assets “belonging to Congoleum [1984 Congoleum as defined below] and which are utilized in the business conducted by its Resilient Flooring Division *on the date hereof*” [April 18, 1986] (emphasis added) and Current Congoleum assumed only those certain liabilities “directly related to the Transferred Assets existing *as of the date hereof* and the business conducted by Congoleum’s Resilient Flooring Division *on the date hereof*,” (emphasis added). See April 18, 1986 Instrument of Assignment and Assumption between 1984 Congoleum (as defined below) and Resilco, attached as Tab 1.

The assets of 1984 Congoleum that then existed and were then being used in the 1984 Congoleum Resilient Flooring Division as of April 18, 1986 did not include the Kearny Manufacturing Facilities, and Current Congoleum did not assume any liabilities arising from assets that were not assigned to it, including but not limited to the Kearny Manufacturing Facilities that were sold to unrelated third parties years prior to the 1986 Transaction. Liabilities

Resilient Acquisition Incorporated, 1984 Congoleum and Congoleum Industries, Inc., which are discussed, *infra* at pages 4 – 5.

arising from assets not assigned to Current Congoleum in April of 1986 were expressly assumed by and remained with the selling corporation, which after the 1986 Transaction was merged into Bath Iron Works Corporation (“BIW”). *See* April 18, 1986 Instrument of Assignment and Assumption between 1984 Congoleum and Congoleum Industries, attached at Tab 5. *See also* Section B, Bath-Congoleum Corporate History, 1986 Transaction and Assets Transferred and Liabilities Assumed in the 1986 Transaction, *infra* at pp. 4 to 5. Such liabilities retained and assumed by the selling corporation included, but were not limited to, liabilities related to the Kearny Manufacturing Facilities.

The corporate entities that owned and/or operated the Kearny Manufacturing Facilities, and which previously manufactured products in Kearny, New Jersey under the brand name “Congoleum,” did business under the names Congoleum-Nairn, Inc., Congoleum Industries, Inc., Congoleum Corporation and/or Congoleum as a division or subsidiary of these other Congoleum entities, Bath Industries, Inc., and/or Bath Iron Works Corporation (“BIW”) (jointly, “Bath-Congoleum”). Current Congoleum is a corporation formed in 1986 by persons different than and unassociated with any persons previously associated with Bath-Congoleum. Current Congoleum was formed for the purposes of completing a transaction by which certain, defined assets and liabilities of Bath-Congoleum were assigned to Current Congoleum. The transferred assets existing and used in the business of Bath-Congoleum² as of April 18, 1986, did not include the Kearny Manufacturing Facilities² and assumed liabilities did not include any liabilities arising from, related to or associated with assets that were not transferred and assigned to Current Congoleum. Current Congoleum never owned or operated the Kearny Manufacturing Facilities and is not the successor to Bath-Congoleum or any owners/operators of the former Kearny Manufacturing Facilities with regard to the liabilities arising from the Kearny Manufacturing Facilities, including but not limited to environmental liabilities alleged by EPA as part of the Diamond Alkali Superfund Site and Operable Unit No. 2 of the Lower Passaic River Study Area (“OU2”).³

² As used herein, “Kearny Manufacturing Facilities” includes all of the property (and equipment associated with the manufacturing of “Congoleum” product (linoleum flooring, bulletin board cork, asphalt tile, vinyl tile, vinyl desk tops, linoleum paste, and military products during WW II (tent cloth, rocket/torpedo parts, bomb casings/parts, mildew proof sandbags, camouflage netting, synthetic leather and other materials) in Kearny, New Jersey and any other products historically manufactured under the brand name “Congoleum” in Kearny, New Jersey) and all property and equipment used for or associated with the storage and warehousing of raw materials and final product in Kearny, New Jersey. *See* Property Ownership Map and statements included therein, including but not limited to Kearny Facility Maps, attached at Tab 2. “Kearny Manufacturing Facilities” does not include the administrative building (Building 37) or a research lab (Building 33), hereinafter referred to as the “Kearny Administrative Facilities.” *See id.*

³ Current Congoleum did own a small administrative building that had been previously owned by Bath-Congoleum, but that administrative building was never used for manufacturing. Current Congoleum used the building for administrative purposes only from April 18, 1986 until that property was sold on March 18, 1987. There are no allegations and there is no evidence that any of the OU2 Chemicals of Concern (“COCs”) or any other hazardous substances were ever used, stored, generated, or discharged at or from this administrative building. *See* Property Ownership Map and statements included therein, including but not limited to Kearny Facility Maps, attached at Tab 2.

B. Bath-Congoleum Corporate History, 1986 Transaction and Assets Transferred and Liabilities Assumed in the 1986 Transaction

Bath-Congoleum owned and operated the Kearny Manufacturing Facilities and manufactured resilient flooring products (“Resilient Flooring Operations”) beginning in or about 1886. In 1968, Congoleum-Nairn, Inc., merged with Bath Industries, Inc. *See* July 10, 1968 Bath Industries, Inc. and Congoleum-Nairn, Inc., Plan and Agreement of Merger, attached at Tab 3. The merged entity changed its name to Congoleum Corporation (“1968 Congoleum”), and continued to own and operate the Kearny Manufacturing Facilities. Between 1980 and 1984, this Bath-Congoleum entity engaged in a series of corporate transactions that re-structured its businesses into different subsidiaries and divisions. As a result of this re-structuring, the assets and liabilities related to the Resilient Flooring Operations, including the liabilities associated with the Kearny Manufacturing Facilities, were transferred to a newly formed entity that was also subsequently named Congoleum Corporation (“1984 Congoleum”). The 1968 Congoleum Corporation (the result of the merger between Congoleum-Nairn, Inc., and Bath Industries, Inc.) changed its name to Congoleum Industries, Inc. (“Congoleum Industries”) and remained as the parent corporation of 1984 Congoleum (as well as other subsidiary businesses part of the corporate restructuring).

In April 1986, Congoleum Industries determined to sell the certain, defined assets of several of its wholly owned subsidiaries to third parties, including certain defined assets of 1984 Congoleum. The sale of the certain defined assets of 1984 Congoleum’s resilient flooring business was accomplished as follows:

1. 1984 Congoleum formed a new corporation on March 31, 1986 named Resilco, Inc. *See* March 31, 1986 Certificate of Incorporation forming Resilco, Inc., attached at Tab 4.
2. 1984 Congoleum then transferred to Resilco, Inc. the “Transferred Assets,” defined as “all of the rights, properties, assets, and contracts . . . “belonging to [1984] Congoleum and **which are utilized in the business conducted by its Resilient Flooring Division on the date hereof . . .**” *See* April 18, 1986 Instrument of Assignment and Assumption between 1984 Congoleum and Resilco, attached at Tab 1 (Emphasis added).⁴
3. Resilco assumed only those liabilities “**directly related to the Transferred Assets existing as of the date hereof and the business conducted by [1984] Congoleum's Resilient Flooring Division on the date hereof.**” [April 18, 1986].” *See id.*, attached at Tab 1 (Emphasis added).
4. 1984 Congoleum transferred to Congoleum Industries all of the capital stock of Resilco and all of the rights, assets and businesses of 1984 Congoleum that were not transferred and assigned to Resilco, and Congoleum Industries expressly

⁴ In April 1986, the manufacturing assets belonging to and used in the business of 1984 Congoleum and transferred to Current Congoleum were the manufacturing facilities and equipment located at 861 Sloan Avenue in Trenton, New Jersey, on Ridge Road in Marcus Hook, Pennsylvania, and in Finksburg, Maryland.

assumed “all other liabilities and obligations of [1984] Congoleum” that were not assumed by Resilco. *See* April 18, 1986 Instrument of Assignment and Assumption between 1984 Congoleum and Congoleum Industries, attached at Tab 5.

5. After completion of the transfer of those certain assets utilized in the resilient flooring business as of April 18, 1986, Resilco changed its name to Congoleum Corporation (“1986 Congoleum”, aka Current Congoleum). *See* April 20, 1986, Amendment to the “Resilco” Certificate of Incorporation, attached at Tab 6.
6. Third party purchasers (Hillside Capital Incorporated) formed a new company named Resilient Acquisition Incorporated. *See* June 25, 1986 Certificate of Incorporation forming Resilient Acquisition Incorporated, attached at Tab 7.
7. Resilient Acquisition Incorporated then “purchased” the Transferred Assets and assumed the liabilities “directly related to the Transferred Assets existing as of [April 18, 1986]” via a merger into 1986 Congoleum, aka Current Congoleum. *See* July 1, 1986 Agreement of Plan of Merger by and Among Resilient Holdings Incorporated, Resilient Acquisition Incorporated, Congoleum Corporation and Congoleum Industries, Inc., attached at Tab 8.
8. 1984 Congoleum merged into Congoleum Industries (the selling parent company), Congoleum Industries changed its name to BIW Industries, Inc. and then BIW Industries merged into Bath Iron Works Corporation (BIW). *See* August 18, 1986, Certificate of Amendment of Restated Certificate of Incorporation of Congoleum Industries, attached at Tab 9.

The Kearny Manufacturing Facilities had been sold by Bath-Congoleum years prior to the 1986 Transaction, were not assets owned by or used in the business of 1984 Congoleum in April 1986 and were not assets transferred to Current Congoleum. Current Congoleum assumed only those liabilities directly related to the assets transferred, and it did not assume liabilities related to assets that were not transferred. Bath-Congoleum (Congoleum Industries, now d/b/a BIW) expressly assumed the liabilities of 1984 Congoleum not transferred to Current Congoleum per the Instrument of Assignment and Assumption between 1984 Congoleum and Congoleum Industries. *See* April 18, 1986 Instrument of Assignment and Assumption between 1984 Congoleum and Congoleum Industries, attached at Tab 5.

CERTIFICATION OF
SUPPLEMENTAL AND AMENDED RESPONSE OF CONGOLEUM CORPORATION
TO
REQUEST FOR INFORMATION
OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING
DIAMOND ALKALI SUPERFUND SITE AND PASSAIC RIVER STUDY AREA

State of New Jersey:

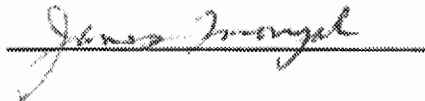
County of Mercer:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (supplemental response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

I am also aware that my company is under a continuing obligation to supplement its response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or the company's response thereto should become known or available to the company.

NAME: James Monyak
TITLE: Vice President, Administration
Congoleum Corporation

SIGNATURE:



Sworn to before me this
8th Day of April 2019



Name:

Notary Public

